

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.929 OF 2006

Smt Kacharabai S. Ubale ...Appellant

v/s

Shri Namdeo P. Ahire ...Respondent

Mr P.N. Joshi for Appellant.

Mr K.K. Tated for Respondent.

CORAM : D.K. DESHMUKH J.

DATE : 10TH AUGUST 2007.

P.C.

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1. By consent of parties, the appeal is taken up for final hearing. The substantial question of law that arises for consideration is that when the Appeal Court found that the document is a registered document and executed without any consideration, should the Appeal Court not have considered whether the document can be treated as a gift deed ?

2. I have heard learned counsel for both the sides. In my opinion, before setting aside the decree passed by the Trial Court, the Appeal Court should have also examined the question whether the document can be treated as a gift deed because the property was given by deceased Kisan in favour of the original plaintiff without consideration. It was also claimed by the plaintiff that apart from being related to Kisan, she was also looking after him. It is obvious that the appeal has been decided by the first Appeal Court in the absence of a lawyer representing the appellant. In my view therefore, following order would met the ends of justice.

3. The order of the Appeal Court passed in civil

appeal No.120 of 1998 is set aside. Civil appeal No.120 of 1998 is remitted back to the First Appeal Court for de novo hearing and decision in accordance with law. It is accordingly so ordered. Appeal is disposed off.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Private Secretary as true copy.

. Certified copy expedited.